

## SAFETY AND PROFESSIONAL SERVICES

Budget Summary						FTE Position Summary				
Fund	2010-11 Adjusted Base	Governor		2011-13 Change Over Base Year Doubled		2010-11	Governor		2012-13 Over 2010-11	
		2011-12	2012-13	Amount	%		2011-12	2012-13	Number	%
GPR	\$0	\$2,873,100	\$2,873,100	\$5,746,200	N.A.	0.00	4.00	4.00	4.00	N.A.
FED	0	2,344,600	2,344,600	4,689,200	N.A.	0.00	21.60	21.60	21.60	N.A.
PR	13,746,500	49,034,500	49,034,500	70,576,000	256.7%	122.32	285.70	285.70	163.38	133.6%
SEG	0	13,938,600	13,938,600	27,877,200	N.A.	0.00	68.30	68.30	68.30	N.A.
TOTAL	\$13,746,500	\$68,190,800	\$68,190,800	\$108,888,600	396.1%	122.32	379.60	379.60	257.28	210.3%

### Budget Change Items

#### 1. STANDARD BUDGET ADJUSTMENTS

PR	\$1,594,200
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**Governor:** Provide \$797,100 annually for standard budget adjustments as follows: (a) turnover reductions (-\$145,200 annually); (b) full funding of continuing salaries and fringe benefits (\$864,800 annually); and (c) full funding of lease costs and directed moves (\$77,500 annually).

#### 2. INCREASE EMPLOYEE CONTRIBUTIONS FOR PENSIONS AND HEALTH INSURANCE

PR	- \$1,058,200
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**Governor:** Delete \$529,100 annually to reflect fringe benefit cost reductions associated with increased state employee contributions for Wisconsin Retirement System (WRS) benefits and health insurance coverage. The calculation of retirement savings is based on employee WRS contributions equal to 5.8% of salary. Health insurance cost reductions are based on employees paying an average of approximately 12.6% of total premium costs, compared to the current average of approximately 6% of costs.

#### 3. AGENCY BUDGET REDUCTIONS

PR	- \$919,400
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**Governor:** Reduce funding by \$459,700 annually associated with a 10% reduction to supplies and other non-personnel costs.

#### 4. ELIMINATE LONG-TERM VACANCIES

**Governor:** Delete \$128,900 and 2.75 positions annually to reflect the elimination of long-term vacant positions under the bill. Funding and position reductions are associated with positions that have been vacant for 12 months or more.

	Funding	Positions
PR	- \$257,800	- 2.75

#### 5. TRANSFERS OF FUNCTIONS FROM OTHER AGENCIES

**Governor:** Provide a total of \$2,873,100 GPR, \$2,010,900 FED, \$35,491,200 PR, and \$13,938,600 SEG and 4.0 GPR, 18.6 FED, 164.0 PR, and 68.3 SEG positions annually related to the transferring functions, duties, and personnel, as listed below to the Department of Regulation and Licensing (DRL), which would be renamed the Department of Safety and Professional Services (DSPS).

	Funding	Positions
GPR	\$5,746,200	4.00
FED	4,021,800	18.60
PR	70,982,400	164.00
SEG	<u>27,877,200</u>	<u>68.30</u>
Total	\$108,627,600	254.90

Under the bill, funding and personnel transferred from the Department of Commerce (Commerce) and the Department of Administration would be provided to three subprograms in DSPS, as follows: (a) \$535,500 GPR, \$242,300 FED, and \$3,786,000 PR and 4.0 GPR, 3.0 FED, and 28.0 PR annually for Professional Regulation and Administrative Services; (b) \$2,338,600 GPR, \$363,900 FED, and \$31,591,700 PR and 1.9 FED and 134.64 PR positions annually for Safety and Buildings; and (c) \$1,404,700 FED, \$113,500 PR, and \$13,938,600 SEG and 13.7 FED, 1.36 PR, and 68.3 SEG positions annually for Environmental and Regulatory Services.

#### Department of Regulation and Licensing

Rename the Department of Regulation and Licensing as the Department of Safety and Professional Services (DSPS). The authority, duties, attached boards and councils, and personnel of DRL would become authority, duties, attached boards and councils, and personnel of DSPS.

Specify that DSPS could have seven division administrators and 10 bureau directors. Under current law, DRL may have four division administrators and five bureau directors.

*Transfer of Department of Commerce Functions.* Modify statutory provisions related to activities currently performed by Commerce as follows:

Under current law, real estate brokers must establish an interest-bearing real estate trust accounts to hold client funds. The Department of Commerce and DRL (renamed as DSPS under the bill) may examine and audit these accounts and establish rules regarding the interest bearing accounts. Under the bill, the Commerce authority would be transferred to the Wisconsin Housing and Economic Development Authority (WHEDA).

Under the bill, WHEDA rather than Commerce would receive interest earnings (minus any service charges or fees) accruing from these accounts.

Statutory language relating to charges and deductions that may or may not be assessed by

financial institutions on interest-bearing real estate trust accounts would become the authority of WHEDA rather than Commerce.

### **Department of Commerce**

*Division of Environmental Regulatory Services and Division of Safety and Buildings.* Provide \$49,557,000 and 217.9 positions all funds, including \$2,338,600 GPR, \$1,768,600 FED, 15.6 FED positions, \$31,705,200 PR, 136.0 PR positions, \$13,744,600 SEG and 66.3 SEG positions annually and transfer the Division of Safety and Buildings and Division of Environmental Regulatory Services from Commerce to DSPS. [See the entry under “Commerce” for a description of the transferred programs and funding.]

*Economic Development Functions and Executive and Administrative Services Personnel.* Provide \$4,756,800 and 36.0 positions all funds, including \$534,500 GPR, 4.0 GPR positions, \$242,300 FED, 3.0 FED positions, \$3,786,000 PR, 27.0 PR positions, \$194,000 SEG and 2.0 SEG positions to transfer certain economic development functions and executive and administrative services personnel from Commerce to DSPS. The transfer would include: (a) administration of the Women's Business Initiative Corporation grant program (\$99,000 GPR annually); (b) administration of the minority, woman-owned, and disabled veteran-owned certification programs (\$31,500 PR annually); (c) administration of small business innovation research assistance grants, funded through the transfer of the minority business projects; repayments appropriation (\$510,500 PR annually); (d) the brownfields redevelopment activities appropriation (\$194,000 SEG and 2.0 SEG positions annually); (e) administrative services funding and position authority (\$435,500 GPR, 4.0 GPR positions, \$242,300 FED, 3.0 FED positions; \$3,244,000 PR, and 27.0 PR positions annually); and (f) the state Relocation Unit. [See the entry under “Commerce” for a description of the transferred programs and funding.]

### **Department of Natural Resources**

*Erosion Control.* Transfer from the Department of Natural Resources (DNR) to DSPS requirements to establish standards for erosion control at construction sites of public buildings and buildings that are places of employment (commercial buildings). Provide DSPS authority to delegate to municipalities any responsibilities for commercial construction site erosion control standards. Specify that all DNR rules and orders relating to commercial construction site erosion control, and in effect on the bill's effective date, remain in effect until modified or repealed by DSPS. Transfer from DNR to DSPS, beginning on the bill's effective date, all pending matters related to commercial construction site erosion control. [See the entry under “Natural Resources” for a description of the transferred programs.]

### **Department of Agriculture, Trade and Consumer Protection**

*Commercial Erosion.* Transfer to DSPS from the Department of Agriculture, Trade and Consumer Protection (DATCP) the authority to issue orders and promulgate rules related to: (a) remodeling or otherwise improving residential or noncommercial property; (b) basement waterproofing; (c) real estate advertising; (d) sales of mobile homes and renting mobile-home sites; and (e) renting residential dwelling units and mobile homes. Specify that DATCP rules and orders related to these subjects, and in effect on the bill's effective date, remain in effect until

modified or repealed by DSPS. See the entry under “Agriculture, Trade and Consumer Protection” for a description of the transferred programs.

### **Department of Administration**

Provide 1.0 PR position annually and transfer \$62,400 PR from supplies to permanent salary and fringe benefits in the DSPS general operations appropriation for human resources and payroll services in DSPS. The position authority would be transferred from DOA. However, the bill does not provide specific protections for personnel currently holding this position. [See the entry under “Administration -- Transfers” for a description of the transferred personnel and funding.]

[Bill Sections: 89, 91, 109, 129 thru 148, 150 thru 166, 494, 495, 808, 815, 1311, 1312, 1334 thru 1337, 1340, 1459, 1628 thru 1640, 1656 thru 1659, 1661, 1666, 1668, 2136 thru 2144, 2395 thru 2397, 2403, 2477, 2647, 2666 thru 2669, 2671, 2672, 2678, 2686, 2697, 2698, 2719, 2756, 2757, 2760, 2879, 3195 thru 3199, 3201, 3203 thru 3206, 3209, 3210, 3212, 3266 thru 3275, 3281, 3471, 3503, 3527, 3528, 3532, and 3541]

## **6. TRANSFER STATE APPROVING AGENCY FUNCTIONS FROM VETERANS AFFAIRS**

	<b>Funding</b>	<b>Positions</b>
FED	\$667,400	3.00

**Governor:** Provide \$333,700 FED and 3.0 FED positions annually related to the transfer of state academic institution and education program approving agency functions for veterans benefits from the Department of Veterans Affairs (DVA). Funding would include \$192,200 FED for salary and fringe benefits, \$76,300 FED for fringe benefits and \$65,200 FED for supplies and services annually.

Under the bill, a total of \$336,000 FED and 3.0 FED positions and \$74,400 SEG and 1.0 SEG position annually would be deleted from the DVA.

Currently, DVA operates as the state approval agency through a contract with the federal Department of Veterans Affairs. The state approval agency is responsible for meeting federal requirements for evaluating, approving, and monitoring of academic institutions and programs that are potentially eligible to receive funding from the Montgomery GI Bill. The Governor may designate the following programs as "veteran's education" under the state approval agency functions: (a) on-the job training and apprenticeship training programs at the Department of Workforce Development; (b) on-the-farm training programs at the Wisconsin Technical College System; and (c) funeral directors apprentices of the Funeral Directors Examining Board. These duties would be transferred.

As a technical modification, correct a current reference to the definition of tribal school (current statutes misnumber the referenced section).

*Nonstatutory Provisions.* Specify that the assets, liabilities and tangible property of DVA primarily related to the state approval agency, as determined by the DOA Secretary, would become assets, liabilities and tangible property of Department of Safety and Professional

Services (DSPS) on the effective date of the bill.

Specify that all pending matters of DVA primarily related to the state approval agency, as determined by the DOA Secretary, would become pending matters of DSPS on the effective date of the bill. Materials submitted to or actions taken by DVA related to these programs would be considered to or taken by DOA.

All contracts entered into by the DVA related to the state approval agency, on the effective date of the bill, would become contracts of DSPS, as determined by the DOA Secretary. The DSPS would be responsible for carrying out the obligations of these contracts unless modified or rescinded by DSPS, to the extent allowed under the contract.

Under the bill, the administrative rules promulgated by the DVA primarily related to the state approval agency, as determined by the DOA Secretary, would remain in effect until the expiration date of the rule or until amended or repealed by DSPS. All orders issued by the DVA related to the state approval agency, as determined by the DOA Secretary, would remain in effect until the end of their effective date or until modified or rescinded by DSPS.

Specify that the DOA Secretary would identify positions to transfer. The transferred individuals would retain their earned rights and status under the state employment relations laws. Any person transferred would not be required to go through a probationary period, if they had already obtained permanent status.

[Bill Sections: 1237 thru 1239, 1244 thru 1248, and 9153(1)]

## **7. LAPSES OF PROGRAM REVENUE BALANCES**

**Governor:** Modify the program revenue appropriations for the Medical Examining Board operations and the general agency operations to specify that unencumbered balances that are in excess of 10% of the expenditures made from those appropriations in the previous year would be lapsed to the general fund. Specify that fines and forfeitures would not be considered part of the received revenue.

[Bill Sections: 496 and 497]

## **8. CREATE REAL ESTATE EXAMINING BOARD**

**Governor:** Delete the current Real Estate Board (REB) and create a Real Estate Examining Board (REEB). Specify that the REEB, rather than DRL, would be responsible for granting credentials, creating rules, and enforcing credential requirements for real estate brokers, salespersons, and business entities and timeshare salespersons as described below.

*Delete Real Estate Board.* Under current law there is a Real Estate Board in DRL, consisting of seven members appointed by the Governor to staggered four-year terms. Four of the members are real estate brokers or salespersons licensed by the Department, the remaining three are members of the public. Board members are entitled to a reimbursement of expenses of

\$25 per day. The Board and the related duties would be deleted under the bill.

*Creation of a Real Estate Examining Board.* Create a seven member REEB appointed by the Governor to staggered four-year terms. Specify that five of the members would be real estate brokers or salespersons licensed by the Department and two would be members of the public. Specify that no members would be allowed to serve more than two terms.

*Transfer of Current Duties.* Specify that the REEB would be responsible for issuance, denial, suspension and reinstatement of credentials to the following professions: (a) real estate brokers; (b) real estate business entities; (c) real estate salespersons; and (d) timeshare salespersons. These professions would be required to submit applications prescribed by REEB rather than the Department.

The Examining Board would become responsible for the following duties relating to timeshare salespersons: (a) specifying information that must be provided in order to determine competency in timeshare sales; (b) approving the form in which timeshare transactions may be made; and (c) approving applications for the transfer of timeshare salespersons from one licensed broker to another.

The Examining Board would become responsible for the following duties relating to real estate brokers and salespersons: (a) insuring that licenses are only granted to individuals that are competent to transact such a business; (b) advising the Secretary of the Department on matters relating to real estate practice; (c) conducting public hearings on forms used in real estate practice; (d) in consultation with the Council on Real Estate Curriculum and Examinations, promulgating rules that establish educational and training for the real estate professions; (e) in consultation with the Council on Real Estate Curriculum and Examinations, examining and grading credential applicants; (f) approving continuing education programs and courses; (g) in preparing a form for the offer to purchase a certain commercial real estate property, requiring the sales form include a statement from the seller acknowledging that the property is not an historical building; (h) preparing notices and bulletins and conducting clinics for the dissemination of information to licensees; (i) entering reciprocal agreements with other states and territories for the licensing of these professions; (j) specifying information that must be provided in order to determine competency in the profession; (k) ensuring that applicants have completed the required educational programs and meet statutory requirements for the profession; (l) except in the case of reciprocal licenses, ensuring that a broker applicant passes both the salesperson and broker examinations; (m) establishing rules for real estate salesperson apprentices; (n) approving applications for the transfer of real estate salespersons from one licensed broker to another; and (o) receiving irrevocable consent forms from nonresident credential holders that specify that the legal actions may be commenced against them if a cause for action arises.

Under current law, a real estate credential applicant (any of the related professions) may provide evidence of continued education upon proof of attendance at approved continuing education classes, or by passing the examination given for their profession. Under the bill, REEB would conduct that examination. The Examining Board would also be allowed to register applicants as "inactive licensees" if requested by a credential holder in good standing. These

inactive licensees could request to REEB the reinstatement of their full credentials upon paying required fees and completing examination and credential requirements. The Examining Board would become responsible for promulgating rules that specified educational requirements for persons seeking reinstatement.

The Examining Board would become responsible for promulgating rules on the following: (a) guiding the real estate profession and defining professional conduct and unethical practice; and (b) specifying the supervisory duties of real estate brokers to their employees.

Under current law, DRL must, under its own determination or upon motion of REB, conduct investigations. If credible information is provided to DRL, regarding potential violations of statutes regulating real estate professions, DRL may hold hearings and make findings. Currently, the Department must present findings to REB for consideration. The Department may commence disciplinary proceedings. An investigation cannot be closed without a motion from REB. Under the bill, REEB would be required to take such actions based on its own determination or upon motion of the agency Secretary. Under the bill, evidence could be provided to either the Department or to REEB. The Examining Board would become responsible for commencing disciplinary actions. Newly specify that such disciplinary proceeding could occur because of violations of administrative rules as well as statutory requirements of the real estate professions.

Delete the following current law requirements in regards to promulgating administrative rules: (a) a requirement that DRL submit proposed rules to REB for review and comments; (b) a requirement that DRL provide copies of rules to REB before official publication; (c) the ability of the REB to provide a co-chair to proposed rule public hearings; (d) the ability to file dissenting opinions to the Legislature regarding DRL's final proposals for rules; (e) a requirement that DRL provide staff assisting REB with the review of rules; and (f) the ability of REB to petition DRL for adoption, amendment, or repeal of a rule.

The Examining Board would have to maintain a register of brokers and salespersons that have had their licenses revoked within the previous two years.

Currently, information provided by the DRL Secretary, or the Secretary's designee, regarding the license status of an individual is taken as prima facie (considered to be truthful unless disproved by other evidence) evidence for the purpose of actions or proceedings concerning an individual. Under the bill, this evidence could be provided by the chair of REEB or the chair's designee.

Specify that REEB rather than REB would provide a member for the Council on Real Estate Curriculum and Examinations. The Department's rules defining uniform investigation of complaints and commencement of disciplinary proceedings would apply to REEB rather than REB. Prior to introduction, the Secretary of the Department would submit information to REEB rather than REB on proposed legislation proposed by the Department that relates to real estate professions.

*Nonstatutory Provisions.* The administrative rules promulgated by DRL relating to real estate professions would remain in effect until the expiration date of the rule or until amended or

repealed by REEB. All orders issued by DRL related to real estate professions would remain in effect until the end of their effective date or until modified or rescinded by REEB.

Any matter pending with DRL of the effective date of the bill, which is primarily related to real estate professions, as determined by the Secretary of DRL, regarding an action, would be transferred to REEB. All materials submitted to DRL, relating to real estate professions, would be considered as submitted REEB. All actions taken by DRL, relating to real estate professions, would be considered actions of REEB. All contracts entered into by DRL that are primarily related to real estate professions would remain in effect and would be transferred to REEB. The Examining Board would be required to carry out obligations of the contract until the contract is modified or rescinded to the extent allowed under the contract.

The initial appointments of REEB would be as follows: (a) one licensed real estate broker or salesperson and one public member whose terms would expire on July 1, 2012; (b) one licensed real estate broker or salesperson and one public member whose terms would expire on July 1, 2013; and (c) three licensed real estate brokers or salespersons whose terms would expire on July 1, 2014

[Bill Sections: 86 thru 90, 149, 150, 163, 3199, 3202, 3207, 3208, 3217 thru 3257, 3259 thru 3265, 3276 thru 3280, and 9140(1) thru (4)]

## **9. REAL ESTATE RENEWAL FEE TRANSFER TO UW-MADISON**

**Governor:** Require the Department to transfer \$10 to the UW-Madison's School of Business from each renewal fee paid for credentials in the following professions: (a) real estate brokers; (b) real estate business entity; (c) real estate salesperson; and (d) timeshare salesperson. Specify that the funding would be used to support the School's Center for Urban Economics.

An estimated \$27,600 GPR-Earned and \$248,200 PR-Rev biennially would be deducted from the Department revenues and an estimated \$275,800 PR biennially would be transferred to UW-Madison. The amounts transferred are not reflected in related appropriations under the bill.

[Bill Sections: 496 and 3258]

## **10. REAL ESTATE BOARD FUNDING REDUCTIONS**

PR	- \$10,000
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**Governor:** Delete \$5,000 annually from general program operations related to conducting at least two board meeting annually through the Internet (-\$3,000 annually) and general unspecified reductions (-\$2,000 annually)

## **11. REPLACEMENT OF CLASSIFIED POSITIONS WITH UNCLASSIFIED POSITIONS**

**Governor:** Delete 2.0 PR classified positions and provide 2.0 PR unclassified positions under DRL's program operations appropriation.



Under 2011 Wisconsin Act 10, 38 classified positions are transferred into the unclassified service to serve as division administrators. Act 10 also redefined "administrators" to include "other managerial positions determined by an appointing authority." The State Budget Office indicates that personnel from three separate employment areas (attorney services positions, communications positions, and legislative liaison positions) will be moved from classified to unclassified service within the specified agencies. The revised unclassified positions were renamed as either chief legal advisors, communications directors, or legislative advisors. Individuals in these unclassified positions are at will employees appointed by the heads of the respective agencies.

The provisions in the 2011-13 biennial budget bill effectuate the intent of 2010 Wisconsin Act 10 in regards to the transfer of classified positions to unclassified positions.

## **12. GIFTS AND GRANTS APPROPRIATION**

**Governor:** Create a PR-continuing gifts and grants appropriation. Specify that the Department may use the appropriation for the expenditure of all funds received from the following: (a) gifts, grants, and bequests; (b) other than fines and forfeitures, settlements of actions for violations related to the regulation of credential holders; and (c) fees or other charges for photocopies, generation of copies of documents from electronic storage and other storage media, conferences, sales of publications, sales of lists of credential holders, sales of promotional materials, sales of other materials, other services provided that are incidental to the licensing, rule making, and regulatory functions of the Department.

[Bill Section: 498]

## **13. SUBSTITUTION OF DRUG EQUIVALENTS AT SKILLED NURSING FACILITIES**

**Governor:** Modify the definition of "practice of pharmacy" related to making therapeutic alternate drug selections to delete the requirement that such selections be: (a) approved by a hospital's medical staff; and (b) be approved for use during a patient's stay within a hospital by the patient's physician or advanced practice nurse prescriber. In addition, allow therapeutic alternate drug selections to be made by a skilled nursing facility or an intermediate care facility for persons with mental retardation, in accordance with such a facility's guidelines or procedures. Delete the requirement for approval of a patient's physician or advanced practice nurse prescriber for the use of therapeutic alternate drug selections.

Under current law, the definition of the practice of pharmacy includes making therapeutic alternate drug selections, if made in accordance with written guidelines or procedures previously established by a pharmacy and therapeutics committee of a hospital and approved by the hospital's medical staff. Use of the therapeutic alternate drug selection for a patient during the period of the patient's stay within the hospital must be approved by the patient's physician or the patient's advanced practice nurse prescriber, if the advanced practice nurse prescriber has entered into a written agreement to collaborate with a physician. These provisions do not currently apply

to skilled nursing facilities or intermediate care facilities for persons with mental retardation.

[Bill Sections: 3214 thru 3216]

#### 14. MEDICAL EXAMINING BOARD POSITIONS

	Funding	Positions
PR	\$228,000	2.00

**Governor:** Provide \$114,000 and annually to extend 2.0 project positions that were approved under 2009 Act 28. The Legislature approved 2.0 investigator project positions for investigating complaints against medical professions. The Department filled 1.0 project position with an investigator and 1.0 with a paralegal. The Governor's recommendation would extend these positions to the end of the 2011-13 biennium.

The projected positions were scheduled to sunset on June 30, 2011, and should have been removed under standard budget adjustments, but were not removed under that provision.

#### 15. MEDICAL EXAMINING BOARD INVESTIGATOR

	Funding	Positions
PR	\$16,800	0.13

**Governor:** Provide \$8,400 and 0.13 position annually for a partial investigator position increase to the medical examining board operations.